

CONFORM

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Attorneys for Plaintiff
MOTHER'S NUTRITIONAL CENTER, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MOTHER'S NUTRITIONAL CENTER,
INC., a California corporation

Plaintiff,

v.

MARTHA'S NUTRITIONAL CENTER
a/k/a MARTHA'S MARKET a/k/a
MARTHA'S MARKET NUTRITIONAL
CENTER, a business entity of unknown
form; and DOES 1 through 10 inclusive,

Defendants.

CASE NO. **SA CV 11-00528** CJC (RNBx)
COMPLAINT FOR:

1. FEDERAL TRADE DRESS INFRINGEMENT, VIOLATION OF 15 U.S.C. 1125(a)
2. UNFAIR BUSINESS PRACTICES, CAL. BUS. & PROF. CODE § 17200 ET SEQ.
3. COMMON LAW TRADE DRESS INFRINGEMENT

DEMAND FOR JURY TRIAL

FILED
11 APR -6 PM 2:10
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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1 Plaintiff Mother's Nutritional Center, Inc. ("MNC"), for its Complaint, alleges
2 as follows:

3 4 JURISDICTION

5 1. MNC brings this action for injunctive relief and damages for federal
6 trade dress infringement in violation of 15 U.S.C. 1125(a), California State unfair
7 business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq., and
8 common law trade dress infringement. This Court has subject matter jurisdiction
9 over the federal question claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This
10 Court has supplemental jurisdiction over the claims alleging violations of state law
11 pursuant to 28 U.S.C. §§ 1338(b) and 1367(a).

12 THE PARTIES

13 2. MNC is a California corporation having offices at 13635 Freeway Dr.,
14 Santa Fe Springs, CA 90670.

15 3. MNC is informed and believes, and on that basis alleges that, defendant
16 Martha's Nutritional Center a/k/a Martha's Market a/k/a Martha's Market Nutritional
17 Center ("Martha's") is a business entity of unknown form located in Santa Ana,
18 California. MNC further alleges that Martha's, at all relevant times hereto, has been
19 and is doing business in this judicial district.

20 4. The true names and capacities of defendants named herein as Does 1
21 through 10, inclusive, including the owner and/or operator of Martha's, are presently
22 unknown to MNC who therefore sues those defendants by such fictitious names.
23 MNC will seek leave of Court to amend this Complaint to allege the true names and
24 capacities of the fictitiously named defendants when that information is obtained

25 5. Defendants Martha's and Does 1-10, inclusive, are collectively referred
26 to herein as the "Defendants."

27 6. MNC is informed and believes, and on that basis alleges, that each of the
28 Defendants conspired and acted in concert with the others to commit the wrongs

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1 against MNC alleged herein and, in doing so, were at all relevant times the agents,
2 servants, employees, principals, joint venturers, alter egos, and/or partners of each
3 other. MNC is further informed and believes, and on that basis alleges, that in doing
4 the things alleged in this Complaint, each of the Defendants was acting within the
5 scope of authority conferred upon that Defendant by the consent, approval and/or
6 ratification of the other Defendants, whether said authority was actual or apparent.

7 INTRODUCTION

8 7. This Complaint is necessitated by the bad faith and fraudulent actions of
9 Defendants, who have, *inter alia*, misappropriated the unique trade dress MNC uses
10 to identify and distinguish its stores.

11 8. MNC began as a family business based on the idea of providing
12 assistance to new and expectant mothers under a federally-funded program for
13 purchasing groceries. From the beginning, MNC has maintained and fostered a
14 clean, family-friendly environment aimed at providing a pleasant and comfortable
15 shopping experience for its customers, while also distinguishing itself from its
16 competitors. Through these efforts, MNC has established itself as the premier store
17 of its kind in Southern California. As part of its efforts, MNC carefully designed all
18 aspects of the appearance of its stores, establishing a protectible trade dress.

19 9. Defendants operate a competing market that offers goods and/or services
20 that are similar to those MNC offers in its stores.

21 10. Defendants have adopted a trade dress in their market that is confusingly
22 similar to MNC's unique and protectible trade dress. Specifically, Defendants' store
23 features, *inter alia*: a confusingly similar color scheme as MNC's stores, confusingly
24 similar counter and floor designs, and confusingly similar signage, thus
25 demonstrating an intent to mislead consumers.

26 11. Defendants are fraudulently misleading the public as to the source of
27 Defendants' good and services. Defendants' actions are taken with full knowledge of
28

1 MNC's intellectual property rights. This lawsuit is necessary to protect MNC's
2 reputation and valuable intellectual property rights and to avoid further harm.

3 FACTS COMMON TO ALL CLAIMS FOR RELIEF

4 MNC's Business

5 12. Established in 1995, MNC is a growing chain of over 70 "WIC Only"
6 grocery stores in Southern California. In other words, each of MNC's grocery stores
7 sell groceries exclusively as part of the federally funded Special Supplemental
8 Program for Women, Infants and Children ("WIC"). Most of its stores are located in
9 strip malls.

10 13. The WIC program is a federally funded program, similar to the food
11 stamps program, that is available to new and expecting mothers, infants, and children
12 aged 5 and under, that meet certain income guidelines. Qualified participants may
13 obtain vouchers which can be redeemed for specific food items at licensed and
14 designated WIC vendors, such as MNC.

15 14. Mothers and expectant mothers obtain vouchers from one of the state-
16 run WIC offices. Under the original rules of the WIC program, mothers and
17 expectant mothers were, at the time they obtained their vouchers, required to select
18 the specific WIC vendor at which they would redeem their vouchers. The name of
19 that WIC vendor was then placed on the vouchers, and those vouchers were
20 redeemable only at the listed WIC vendor.

21 15. On or about October 30, 2006, the WIC program altered its procedures
22 for redeeming vouchers. Program participants are no longer required to select a
23 specific WIC vendor at the time they obtain their vouchers. Instead, WIC vouchers
24 are now issued without regard to a particular vendor and can be redeemed at any
25 licensed WIC vendor.

26 16. MNC began as a family business. As the company has grown, MNC has
27 striven to maintain a family sensibility in each of its stores. From its beginning,
28 MNC has diligently worked to distinguish itself from other WIC vendors in this

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sense, in the spirit of their mottos, "Come Home to Mother's" and "Experience the Difference." A primary goal of MNC is that all customers enjoy a pleasant shopping experience in MNC's familiar settings. MNC's stores have come to be known as exceptionally clean, with helpful and friendly employees. MNC's employees help customers to their cars and each MNC's store features a learning and play area for children.

MNC's Trade Dress

17. Since its inception, MNC has carefully selected unique colors and images that would become familiar to its patrons and make MNC's stores singularly identifiable within the WIC industry. MNC's stores' unique appearance consists of at least the following elements (hereinafter referred to as the "Trade Dress"):

- a) A bright, contemporary internal color scheme, including brightly colored walls and floors in orange, green, and yellow;
- b) Prominently displayed signage featuring various bright colors, including, including pink, orange and green;
- c) Floors with yellow, green, and orange geometric shapes;
- d) Children's play area inside the store with toys on the walls;
- e) Counters with orange tops, and yellow squares with orange borders on the sides;
- f) "Slat" shelving, *i.e.* shelves suspended directly from white slat walls, rather than traditional racks of shelves;
- g) Metal wire racks to store and/or display juice;
- h) Brightly colored soffit design above the product displays;
- i) Orange baskets for customers' produce; and
- j) Unique produce case layout and display.

18. MNC's unique Trade Dress is widely known among participants in the WIC program.

1 19. In the past several years alone, MNC has spent millions of dollars on its
2 marketing media campaigns, in both English and Spanish. MNC's print and
3 television advertisements often feature its Trade Dress. As a result of its extensive
4 advertising and continuous and ever-expanding presence, MNC has accumulated
5 significant goodwill in its Trade Dress, and consumers have come to identify MNC
6 by its Trade Dress, and associate both that Trade Dress and the MNC name, with
7 clean, pleasant, high-quality stores.

8 Defendants' Infringing Conduct

9 20. Defendants operate a store located at 1007 S. Bristol Street #A, Santa
10 Ana, California, 92703. Upon information and belief, like MNC's stores, Defendants'
11 store is a WIC Only store located in a strip mall.

12 21. Defendants employ a trade dress at their store that is confusingly similar
13 to MNC's unique and protected Trade Dress. Upon information and belief, the trade
14 dress used by Defendants (hereinafter the "Infringing Trade Dress") includes, but is
15 not limited to, the following:

16 a) A bright, contemporary internal color scheme, that is
17 similar to the one used by MNC in its stores, including brightly colored walls and
18 floors;

19 b) Prominently displayed signage that also features various
20 bright colors;

21 c) Floors with yellow, green, and orange geometric shapes that
22 are similar to the ones on MNC's stores;

23 d) Children's play area inside the store with toys on the walls
24 similar to the ones in MNC's stores;

25 e) Counters with orange tops, and yellow squares with orange
26 borders on the sides that are similar, if not identical, as the ones in MNC's stores;

27 f) "Slat" shelving, rather than traditional racks of shelves, that
28 are similar to the ones used in MNC's stores;

g) Metal wire racks to store and/or display juice that are similar to the ones used in MNC's stores;

h) Brightly colored soffit design above the product displays that is similar to the ones on MNC's stores;

i) Orange baskets for customers' produce that are similar to the ones used in MNC's stores; and

j) The same or similar produce case and layout/scheme design for the produce display as the ones used in MNC's stores.

22. Upon information and belief, Defendants adopted and began using the Infringing Trade Dress after MNC adopted and began using its Trade Dress.

23. Defendants' store is of an inferior quality to MNC's stores. Yet based on the confusing similarity between MNC's Trade Dress and Defendants' Infringing Trade Dress, as described above, when customers encounter Defendants' store, they are likely to be confused into believing that Defendants' store is authorized, sponsored by, or somehow affiliated with MNC, which is not the case.

24. As a result of the Defendants' misappropriation of the unique Trade Dress used by MNC to identify its stores, the harm to MNC is direct and palpable. The reputation, goodwill, and standards of excellence that MNC has worked so diligently to achieve are in jeopardy. MNC has no way to control the quality of Defendants' store or services, and any problems arising in connection with Defendants' store or services may well negatively and detrimentally impact the reputation and goodwill MNC has gained among its customers.

FIRST CLAIM FOR RELIEF

(Federal Trade Dress Infringement in Violation of 15 U.S.C. § 1125(a))

25. MNC realleges and incorporates by reference Paragraphs 1 through 24 above as though fully set forth herein.

26. For many years, MNC has used its distinctive Trade Dress in commerce in connection with its chain of WIC Only stores. The Trade Dress, described above,

1 is comprised of distinctive features which are protected under Lanham Act § 43(a).
2 MNC's Trade Dress is either inherently distinctive or, as result of its long-standing
3 continuous use, has acquired secondary meaning whereby the relevant consuming
4 public and the trade associate these features with a single source.

5 27. Defendants are using in commerce trade dress that is confusingly similar
6 to MNC's unique and protectible Trade Dress.

7 28. MNC is informed and believes, and based thereon alleges, that in
8 adopting the Infringing Trade Dress, Defendants intended to and did confuse,
9 mislead, and/or deceive the public into believing that MNC somehow authorized,
10 sponsored, approved, or licensed Defendants' store, which is not the case.

11 29. These impressions created by Defendants were and are false. In fact,
12 MNC has not authorized, sponsored, licensed, or given permission to Defendants to
13 use MNC's protected Trade Dress, or the Infringing Trade Dress, or any trade dress
14 similar thereto, in any manner whatsoever.

15 30. MNC is informed and believes, and based thereon alleges, that
16 Defendants' conduct as alleged herein was willful and undertaken with knowledge
17 that the Infringing Trade Dress as used by Defendants is confusingly similar to
18 MNC's Trade Dress and that its use would confuse, mislead, and/or deceive the
19 public into believing that MNC somehow authorized, sponsored, approved, or
20 licensed Defendants' store.

21 31. As a direct and proximate result of Defendants' actions as described
22 herein, MNC has suffered and will continue to suffer irreparable damage to its
23 business, reputation and good will.

24 32. Pursuant to 15 U.S.C. § 1116(a), MNC is entitled to an order enjoining
25 Defendants' from using MNC's Trade Dress, the Infringing Trade Dress, or any trade
26 dress similar thereto. Pursuant to 15 U.S.C. § 1117(a), MNC is entitled to an order
27 requiring Defendants to account to MNC for any and all profits derived by
28 Defendants from their wrongful actions, and to an order awarding all damages

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1 sustained by MNC by reason of the infringement caused by Defendants.
 2 Additionally, MNC is informed and believes, and on that basis alleges, that
 3 Defendants' conduct alleged herein was intentional and in conscious disregard of
 4 MNC's rights. Pursuant to 15 U.S.C. § 1117(a), MNC is entitled to an award of treble
 5 damages and/or enhanced profits against Defendants.

6 33. Defendants' acts make this an exceptional case under 15 U.S.C.
 7 § 1117(a) and, therefore, MNC is entitled to an award of its attorneys' fees and costs.

8 **SECOND CLAIM FOR RELIEF**

9 (Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §
 10 17200 *et seq.*)

11 34. MNC realleges and incorporates by reference Paragraphs 1 through 33
 12 above as though fully set forth herein.

13 35. Defendants' acts alleged herein constitute unlawful, unfair, and/or
 14 fraudulent business acts or practices and/or misleading advertising pursuant to
 15 California Business & Professions Code § 17200 *et seq.*

16 36. MNC has been damaged and will continue to be damaged by
 17 Defendants' unlawful, unfair and/or fraudulent business acts or practices and/or
 18 misleading advertising as alleged herein.

19 37. MNC is entitled to an injunction prohibiting Defendants, their officers,
 20 agents, employees, and all persons acting in concert with them, from continuing the
 21 practices alleged herein, and MNC is entitled to restitution of all amounts acquired by
 22 Defendants by means of such wrongful acts from Defendants as a result of the
 23 unlawful, unfair, and/or fraudulent business practices alleged herein.

24 **THIRD CLAIM FOR RELIEF**

25 (Common Law Trade Dress Infringement)

26 38. MNC realleges and incorporates by reference Paragraphs 1 through 37
 27 above as though fully set forth herein.

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1 39. Defendants' conduct constitutes trade dress infringement under
2 California law.

3 40. By reason of Defendants' conduct MNC has sustained and will continue
4 to sustain substantial injury, loss and damage.

5 41. Further irreparable harm and injury to MNC is imminent as a result of
6 Defendants' conduct, and MNC is without an adequate remedy at law. MNC is
7 entitled to an injunction restraining Defendants, their agents, employees,
8 representatives and all persons acting in concert with them from engaging in further
9 acts of trade dress infringement.

10 42. MNC is further entitled to recover from Defendants the damages
11 sustained by MNC as a result of Defendants' acts of trade dress infringement, in an
12 amount to be proven at trial.

13 43. MNC is informed and believes, and on that basis alleges, that
14 Defendants' conduct was willful, fraudulent and malicious and MNC is thereby
15 entitled to punitive damages.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, MNC prays for judgment against Defendants as follows:

18 A. For permanent injunctive relief against Defendants, enjoining and
19 restraining Defendants, and all their officers, directors, stockholders, owners, agents,
20 representatives, servants and employees, and all those acting in concert or privity
21 therewith, from directly or indirectly:

22 1. infringing MNC's trade dress rights in any way, including, without
23 limitation, MNC's Trade Dress as described herein;

24 2. using any false or misleading designation of origin, or any false or
25 misleading description or statement, including, without limitation, MNC's Trade
26 Dress as described herein, that can, or is likely to, lead the consuming public or
27 individual members thereof, to believe that any product or service provided by
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1 Defendants is in any manner associated or connected with MNC, or is sponsored,
2 approved or authorized by MNC; and

3 3. engaging in any unfair business practices or acts of unfair
4 competition in any manner with respect to MNC's trade dress, without limitation,
5 MNC's Trade Dress as described herein.

6 B. Ordering Defendants to file with the Court and to serve on counsel for
7 MNC, within thirty (30) days from entry of an injunction, a report setting forth the
8 manner and form in which Defendants have complied with the injunction.

9 C. For an order that, by the acts complained of herein, Defendants have
10 infringed MNC's rights in and to its Trade Dress, in violation of 15 U.S.C. 1125(a).

11 D. For an order that, by the acts complained of herein, Defendants have
12 engaged in unlawful, unfair and/or fraudulent business acts or practices, in violation
13 of Cal. Bus. & Prof. Code § 17200 *et seq.*

14 E. For an order that, by the acts complained of herein, Defendants have
15 infringed MNC's common law trade dress rights.

16 F. For an order awarding MNC general and/or specific damages, in an
17 amount to be fixed by the Court in accordance with proof, including enhanced and/or
18 exemplary damages, as appropriate, as well as all of Defendants' profits or gains of
19 any kind from Defendants' wrongful acts; and further for an order that such acts were
20 willful and wanton, thereby justifying an award, where appropriate, of treble or
21 enhanced damages.

22 G. For an order awarding MNC restitution of all amounts obtained by
23 Defendants by means of their wrongful acts described herein;

24 H. For an order awarding MNC its costs and attorneys' fees incurred in
25 prosecuting this action.

26 I. For an order awarding MNC costs of suit and pre-judgment interest.
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1 J. For an order awarding MNC such other and further relief as the Court
2 deems just and proper.

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4 DATED: April 6, 2011

JEFFER, MANGELS, BUTLER & MITCHELL LLP
DAN P. SEDOR, P.C.
AMY LERNER HILL

5
6
7 By: _____

8 DAN P. SEDOR
9 Attorneys for Plaintiff MOTHER'S
10 NUTRITIONAL CENTER, INC.
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
Mother's Nutritional Center, Inc. hereby demands trial by jury on all issues raised by
the Complaint.

DATED: April 6, 2011

JEFFER, MANGELS, BUTLER & MITCHELL LLP
DAN P. SEDOR, P.C.
AMY LERNER HILL

By: _____

DAN P. SEDOR
Attorneys for Plaintiff MOTHER'S
NUTRITIONAL CENTER, INC.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV11- 528 CJC (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

DAN SEDOR, P.C. (Bar No. 216288) dpc@jmbm.com
 AMY LERNER HILL (Bar No. 216288) akl@jmbm.com
 JEFFER MANGELS BUTLER & MITCHELL LLP
 1900 Avenue of the Stars, 7th Floor,
 Los Angeles, California 90067
 Telephone: (310) 203-8080
 Facsimile: (310) 203-0567
 Attorneys for: Plaintiff, MOTHER'S NUTRITIONAL
 CENTER

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

MOTHER'S NUTRITIONAL CENTER, INC., a California
 corporation

PLAINTIFF(S)

v.

MARTHA'S NUTRITIONAL CENTER a/k/a MARTHA'S
 MARKET a/k/a MARTHA'S MARKET NUTRITIONAL
 CENTER, a business entity of unknown form; and DOES 1
 THROUGH 10, inclusive

DEFENDANT(S).

CASE NUMBER

SACV11-00528 CTC (RNBx)

SUMMONS

TO:DEFENDANT(S): Martha's Nutritional Center a/k/a Martha's Market a/k/a Martha's Market Nutritional Center, a business entity of unknown form; and Does 1 through 10, inclusive

A lawsuit has been filed against you.

Within **21** days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Dan P. Sedor, whose address is Jeffer Mangels Butler & Mitchell LLP, 1900 Avenue of the Stars, 7th Floor, Los Angeles CA (310) 203-8080. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

APR - 6 2011

Dated: _____

Clerk, U.S. District Court

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
MOTHER'S NUTRITIONAL CENTER, INC., a California corporation

DEFENDANTS
MARTHA'S NUTRITIONAL CENTER a/k/a MARTHA'S MARKET a/k/a MARTHA'S MARKET NUTRITIONAL CENTER a business entity of unknown form; and DOES 1 THROUGH 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Attorneys (If Known)

Dan P. Sedor, P.C. (Bar No. 139091) dps@jmbm.com

Amy Lerner Hill (Bar No. 216288), akl@jmbm.com

Jeffer Mangels Butler & Mitchell LLP

1900 Avenue of the Stars, 7th Fl, Los Angeles CA 90067

(Phone) (310) 203-8080 (Fax) 310-203-0567

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify):
☐ 6 Multi-District Litigation
☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☒ MONEY DEMANDED IN COMPLAINT: \$

Amount to be determined at trial.

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

(1) 15 U.S.C. 1125(a), (2) Cal. Bus. & Prof. Code Section 17200 et. seq., (3) Common Law Trade Dress Infringement

VII. NATURE OF SUIT (Place an X in one box only.)

CONTRACT	PERSONAL INJURY	PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC. Rates/etc.	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 61 HIA(1395m)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 894 Energy Allocation Act				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 895 Freedom of Info. Act				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice				
<input type="checkbox"/> 950 Constitutionality of State Statutes				

FOR OFFICE USE ONLY: Case Number:

SACV11-00528

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

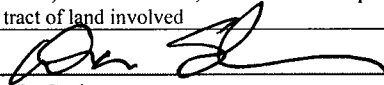
- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):


 Dan P. Sedor

Date April 6, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)